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 DELUCA

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 LARRY KLAYMAN,

12 Plaintiff,

13 vs.

14 STEPHANIE A. LUCK DELUCA,
 SUZANNE JAMBE, JAMES ROLLINSON,
 15 BAKER HOSTETLER, HEWITT B. SHAW,
 EBAY, INC., PAYPAL, INC. (A
 16 SUBSIDIARY OF EBAY),

17 Defendants.

Case No. 14-CV-03190-EJD

**DEFENDANT STEPHANIE A.
 DELUCA'S NOTICE OF MOTION AND
 MOTION TO DISMISS PLAINTIFF'S
 COMPLAINT PURSUANT TO FRCP
 12(b)(2) & 12(b)(3); MEMORANDUM OF
 POINTS & AUTHORITIES IN SUPPORT
 THEREOF**

Date: January 16, 2015

Time: 9:00 a.m.

Dept.: 4

Judge: The Honorable Edward J. Davila

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14-CV-03190-EJD

DEFENDANT STEPHANIE A. DELUCA'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S
 COMPLAINT PURSUANT TO FRCP 12(b)(2) & 12(b)(3); MEMORANDUM OF POINTS & AUTHORITIES IN
 SUPPORT THEREOF

NOTICE OF MOTION & MOTION TO DISMISS

NOTICE IS HEREBY GIVEN that on January 16, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard, defendant Stephanie A. DeLuca ("DeLuca"), erroneously sued as Stephanie A. Luck Deluca, will move this Court, at the United States Courthouse located at 280 South First Street, San Jose, CA 95513, Courtroom 4, before the Honorable Edward J. Davila, for an order:

(a) pursuant to Federal Rules of Civil Procedure, Rule 12(b)(1) dismissing this action for lack of subject matter jurisdiction on the ground that the required diversity of citizenship of the parties is not present and the amount in controversy is far below the jurisdictional threshold under 28 U.S.C. § 1332(a);

(b) pursuant to Federal Rules of Civil Procedure, Rule 12(b)(2), dismissing this action for lack of personal jurisdiction over defendant DeLuca on the ground that this Court has no personal jurisdiction over DeLuca;

(c) pursuant to 18 U.S.C.S. § 1965 that this Court has no personal jurisdiction over the RICO defendants; and

(d) granting defendant DeLuca such other incidental relief as may be appropriate.

This motion is based on this Notice of Motion, the accompanying Declaration of Stephanie A. DeLuca, the accompanying Memorandum of Points & Authorities, oral argument of counsel, and on all of the pleadings and papers on file in this action.

Dated: August 27, 2014

ROBINSON & WOOD, INC.

By: /s/Jesse F. Ruiz

JESSE F. RUIZ

HELEN H. CHEN

Attorneys for Defendant STEPHANIE A.
DELUCA

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ROBINSON & WOOD, INC.
ATTORNEYS AT LAW

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2 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT**

3 **I. INTRODUCTION**

4 Defendant Stephanie A. DeLuca ("DeLuca"), erroneously sued as Stephanie A. Luck
5 Deluca, moves this Court to dismiss the complaint under Federal rule of Civil Procedure §
6 12(b)(1) for lack of subject matter jurisdiction, and for lack of personal jurisdiction under §
7 12(b)(2).

8 This action arises out of defendant (and Ohio resident) DeLuca's attempt to collect an
9 attorneys' fees judgment entered in an Ohio marriage dissolution action and subsequent custody
10 dispute. Plaintiff, who is a Florida resident and the ex-husband of DeLuca, was found by the Ohio
11 state court in contempt of court for failure to pay the judgment. In connection with the contempt
12 proceedings, DeLuca's Ohio attorneys sought the subpoena power of the Ohio court to compel
13 PayPal to disclose information about plaintiff's PayPal accounts. Thereafter, subpoenas were
14 issued by the Ohio court and received by the PayPal defendants in California.

15 DeLuca contends that this Court lacks general personal jurisdiction over DeLuca on the
16 ground that her alleged contact with California does not amount to the type of substantial,
17 continuous and systematic contacts required for a finding of general jurisdiction. This Court also
18 lacks specific personal jurisdiction over DeLuca because plaintiff fails to establish that DeLuca
19 purposely availed herself of the benefits and protections of this district.

20 Furthermore, the alleged predicate acts—bringing the contempt proceeding in the Ohio
21 State Court and service of the court-issued subpoenas—are inadequate to confer personal
22 jurisdiction over DeLuca and other RICO defendants in this Court. The RICO defendants had no
23 significant contacts with California, and judicial economy does not favor trying action in this
24 Court.

25 Finally, this Court lacks diversity jurisdiction because (1) plaintiff and several co-
26 defendants are residents of Florida; and (2) the amount in controversy is below the jurisdictional
27 threshold.

II. THE COMPLAINT**A. The Parties**

Plaintiff Larry Klayman ("Klayman") filed the complaint in this action on July 5, 2014.

Plaintiff Klayman ("Klayman") is an attorney (para. 13) and resident of Florida (para. 1).

Defendant DeLuca is a resident of Ohio and the ex-wife of Klayman (para. 2).

Defendant Suzanne Jambe ("Jambe") is a resident of Ohio (para. 3). Defendant James Rollinson ("Rollinson") is a resident of Ohio (para. 4). Defendant Hewitt B. Shaw ("Shaw"), Jambe and Rollinson are attorneys and partners with the firm of Baker Hostetler, a limited liability partnership and a national law firm with offices in multiple cities, including Cleveland, Ohio, and with offices in California and doing business within this judicial district (para. 3-6). Shaw is the Office Managing Partner of the Cleveland headquarters of Baker Hostetler (para. 6).

Defendant eBay, Inc. ("eBay") is a corporation with its headquarters and principal place of business in San Jose, California, and is the parent company of PayPal (para. 7). Defendant PayPal, Inc. ("PayPal") is a subsidiary of eBay (collectively "the PayPal defendants"), and is a corporation with its headquarters and principal place of business in San Jose, California (para. 8). The PayPal defendants provide credit card services for plaintiff (para. 50).

B. Jurisdiction & Venue

Plaintiff alleges that jurisdiction is proper pursuant to 28 U.S.C. § 1332 (complete diversity and the amount in controversy over \$75,000); 28 U.S.C. § 1367 (supplemental jurisdiction); and 18 U.S.C. § 1965 (nationwide jurisdiction under the Racketeer Influenced and Corrupt Organizations Act ("RICO")) (para. 10).

Plaintiff alleges that venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claim occurred within this district; and pursuant to PayPal's User Agreement (para. 11-12).

C. The Allegations

Plaintiff divorced DeLuca in June 2003 (para. 14). At that time, the parties entered into a Consent Marital Settlement Agreement in the commonwealth of Virginia which contained a

1 choice of law provision that mandated and required that Virginia law would apply to the
 2 enforceability and all other matters concerning the Consent Marital Settlement Agreement (para.
 3 14). Plaintiff has two children with DeLuca (para. 16). Plaintiff alleges that in the summer of
 4 2007, he was forced to file for custody of his children in the Court of Common Pleas for
 5 Cuyahoga County, State of Ohio (Case No. DR-07-316840). Plaintiff also alleges that DeLuca
 6 failed to provide to him medical information about a serious accident involving their youngest
 7 child. *Id.* Plaintiff subsequently withheld child support on the basis of disputes involving
 8 visitation following DeLuca's remarriage in 2007 (para. 17-19).

9 The attorney defendants represented DeLuca in the contempt proceedings in the Ohio state
 10 court against plaintiff in which the court found plaintiff in contempt for not paying child support;
 11 DeLuca was awarded a judgment of \$320,000 in attorney's fees on June 22, 2011 ("judgment")
 12 (para. 20). The attorney defendants, on behalf of DeLuca, brought a motion to show cause for
 13 plaintiff's alleged violation of the judgment, attempting to incarcerate plaintiff for his non-payment
 14 of the judgment against him (para. 21).

15 In August of 2012, the attorney defendants, on behalf of DeLuca, sent subpoenas to third
 16 party entities, including the PayPal defendants, which sought financial records which they
 17 believed contained banking information related to plaintiff (para. 24-25(a)-(c)). Further, the
 18 attorney defendants sent the subpoena to the Cuyahoga Support Enforcement Agency requesting
 19 documents relating to all payments made (including checks and wire transfers), between January
 20 1, 2012 to the present, by plaintiff to DeLuca, to either Ohio Support Payment Central or the
 21 Cuyahoga County Child Support Enforcement Agency (para. 25(d)). The subpoenas were issued
 22 by the Ohio court on August 8, 2012 (para. 24). The PayPal defendants received the subpoenas on
 23 August 12, 2012.¹ (*Id.*) On August 16, 2012, PayPal responded to the subpoena and sent
 24 documents and a CD to defendant Rollinson via Federal Express (para. 29-30, 33).

25 _____
 26 ¹ The complaint is contradictory as to whether only one subpoena or multiple subpoenas
 27 were issued to the PayPal Defendants (para. 24-25.)

On August 16, 2012, plaintiff, through written correspondence, voiced his intention to move to quash the subpoenas in correspondence to the attorney defendants (para. 27). On August 20, 2012, plaintiff filed his motion to quash the subpoenas in Ohio state court, pursuant to Ohio Rules of Civil Procedure Rule 45(C)(3) (para. 28). Upon learning of the release of documents by the PayPal defendants, plaintiff immediately demanded that the PayPal defendants retrieve the documents sent to the attorney defendants (para. 37). Plaintiff was contacted by PayPal's counsel on August 20, 2014, who informed plaintiff that PayPal would request the immediate return of the released records based on plaintiff's objections (para. 38). On the same day, the PayPal defendants demanded the return of the released documents and information. (*Id.*)

The complaint alleges ten counts, eight of them are made against DeLuca and the attorney defendants: (1) fraud by statement to third parties; (2) fraud; (3) intrusion into private affairs; (4) trespass to chattels; (5) conversion; (6) unlawful, unfair, fraudulent business practices; (7) civil violations of RICO; and (8) conspiracy to engage in RICO. Two counts are made against the PayPal defendants: breach of contract and negligence.

With respect to the RICO claim, plaintiff alleges that the predicate acts clustered around a continued pattern of fraud: (1) the attorney defendants, on behalf of DeLuca, sought to fraudulently have plaintiff held in contempt of court, in violation of the Ohio Constitution; and (2) the attorney defendants and DeLuca fraudulently sought and obtained financial records which contained banking information related to plaintiff (para. 99). Plaintiff further alleges that the attorney defendants, on behalf of DeLuca, engaged in a pattern of racketeering activity across state lines. (para. 89, 80, 96).

Plaintiff prays for (1) general damages in an amount exceeding \$1,000,000; (2) punitive and exemplary damages in excess of \$2,000,000; (3) injunctive relief; (4) an award of treble damages as consistent with 18 U.S.C. § 1964(c); (5) attorney's fees and costs (regardless that plaintiff is in pro per); and (6) prejudgment interest.

On August 5, 2014, this Court granted DeLuca an additional 21 days to file a responsive pleading. (Dkt. 17.)

III. LEGAL AUTHORITY**A. This Court Has No Personal Jurisdiction over DeLuca**

This Court should dismiss the complaint for lack of personal jurisdiction over DeLuca. F.R.C.P. 12(b)(2). Once a defendant has filed a motion to dismiss for lack of personal jurisdiction, the burden rests on the plaintiff to prove that jurisdiction exists in the forum state. *IMO Indus., Inc. v. Kierkert AG*, 155 F.3d 254, 257 (3d Cir. 1998). Defendant may submit declarations and affidavits in support of her motion. *Stranahan Gear Co., Inc. v. NL Industries, Inc.*, 800 F.2d 53, 58 (3d Cir. 1986).

DeLuca is not a resident of this forum district. Personal jurisdiction over an out-of-state defendant arises when the defendant has "certain minimum contacts with [the forum] such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). A plaintiff meets the burden by establishing that general or specific jurisdiction over the defendant exists. *Third Nat'l Bank v. Wedge Group, Inc.*, 882 F.2d 1087, 1089 (6th Cir. 1989).

1. This Court Has No General Personal Jurisdiction over DeLuca

General jurisdiction exists if non-resident defendants' activities in the forum state are "substantial, continuous and systematic" as to render them essentially at home in the forum State. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). In evaluating general jurisdiction, courts consider " 'whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there.' " *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1172 (9th Cir. 2006). Courts also consider other factors such as "[l]ongvity, continuity, volume, economic impact, physical presence, and integration into the state's regulatory or economic markets". *Id.*

None of the factors supporting exercise of general jurisdiction are present here. DeLuca has never resided in California. (DeLuca Decl., ¶ 6.) She does not own any real or personal property in California. (DeLuca Decl., ¶ 11.) She maintains no bank accounts or records in

1 California. (DeLuca Decl., ¶ 12.) Moreover, DeLuca does not own or operate or transact any
 2 personal business in California, never solicits business in California, and has never had an office
 3 in California. (DeLuca Decl., ¶ 7.) She is never licensed to do business in California, and is never
 4 employed in California. (DeLuca Decl., ¶¶ 8-9.) She has no agent or representative in California.
 5 (DeLuca Decl., ¶ 10.)

6 DeLuca's only specific contact with the forum is her Ohio attorneys' service of court-issued
 7 subpoenas upon a California entity. (DeLuca Decl., ¶ 5.) DeLuca's alleged single activity with
 8 California does not amount to the type of substantial, continuous and systematic contacts required
 9 for a finding of general jurisdiction. It would be unreasonable to require DeLuca to defend the
 10 action in this Court. *Tuazon*, supra, 433 F.3d at 1175. Travel costs would pose an undue financial
 11 burden on DeLuca. (DeLuca Decl., ¶ 14.) Moreover, DeLuca must take care of two young school
 12 aged children and her elderly mother who lives nearby. (*Id.*) Simply put, DeLuca will sustain
 13 unjustified hardship if she is haled into this forum court to defend herself.

14 **2. This Court Has No Specific Personal Jurisdiction over** 15 **DeLuca**

16 In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to
 17 adjudication of issues deriving from, or connected with, the very controversy that establishes
 18 jurisdiction. *Goodyear Dunlop Tires*, supra, 131 S. Ct. at 2851. Plaintiff must establish that the
 19 nonresident defendant purposefully directed its activities toward residents of the forum state or
 20 otherwise established contacts with the forum state, and that plaintiff's cause of action arises out of
 21 or results from the defendant's forum-related contacts. *Burger King Corp. v. Rudzewics*, 471 U.S.
 22 462, 477 (1985). " 'Some single or occasional acts' related to the forum may not be sufficient to
 23 establish jurisdiction if 'their nature and quality and the circumstances of their commission' create
 24 only an 'attenuated' affiliation with the forum." *Burger King Corp.*, supra, 471 U.S. at 476, fn. 18,
 25 citing *International Shoe Co.*, supra, 326 U.S. at 318.

26 To satisfy the "purposeful availment" requirement of specific jurisdiction, a defendant
 27 must purposefully and voluntarily direct her activities at residents of the forum state in an effort to
 28 obtain a benefit from that state, such as distributing commercial products or conducting extensive

1 advertising aimed at residents of the forum state. *Burger King Corp.*, *supra*, 471 U.S. at 462, 472-
 2 473; see also *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1067.) A defendant
 3 should not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated"
 4 contacts. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *World-Wide Volkswagen*
 5 *Corp. v. Woodson*, 444 U.S. 286, 299 (1980).

6 Moreover, specific personal jurisdiction over a nonresident defendant exists only to the
 7 extent permitted by the forum state's long-arm statute and by the due process clause of the United
 8 States Constitution. *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104-105
 9 (1987). Under California law, plaintiff must proffer "evidence of express aiming or intentional
 10 targeting" in order to establish personal jurisdiction over the nonresident defendant, *Pavlovich v.*
 11 *Sup. Ct.*, 29 Cal.4th 262, 273 (2002) .

12 For example, in *Edmunds v. Sup.Ct. (Ronson)*, 24 Cal.App.4th 221, 236 (1994) , the court
 13 found that merely representing a California resident in an out-of-state action, although it involves
 14 receiving fee payments from California, taking a deposition in California, and communications
 15 from the California client, did not establish "purposeful availment" of the privilege of conducting
 16 activities in California. In *Edmunds*, an attorney who practiced in Hawaii represented a California
 17 partnership in a Hawaiian action. His clients later sued him for malpractice in California. The
 18 court found that the Hawaiian attorney's activities did not constitute purposeful availment
 19 sufficient to confer jurisdiction over the Hawaiian attorney. (*Id.* at 234.) The court noted that
 20 substantial evidence does not support plaintiff's claim that defendant attorney engaged in tortious
 21 conduct while within the State of California at the time of the deposition. (*Id.* at 222.)

22 The court in *Edmunds* examined whether defendant's acts reflected a substantial
 23 connection with California, or whether there was only an "attenuated connection". (*Id.* at 223.)
 24 The court further considered public policy concerns of allowing an exercise of California
 25 jurisdiction over an out-of-state attorney who represented California clients in an out-of-state
 26 action, and whose contact with California was limited. The court pointed out that doing so would
 27

effectively penalize out-of-state attorneys by subjecting them to suit in California on a highly attenuated theory. (*Id.* at 226.)

The case at bar is akin to *Edmunds* in that the alleged contacts with California both arose out of an out-of-state proceeding. Here, the service of subpoenas upon the PayPal defendants was an incidental and highly attenuated contact with California arising out of the contempt proceedings in the Ohio state court. Most importantly, all legal services arising out of the contempt proceeding, including the issuance of subpoenas to the PayPal defendants, were performed by Baker Hostetler's attorneys at their Cleveland, Ohio office. (DeLuca Decl., ¶ 5.) DeLuca did not retain, and no services were ever provided by attorneys in Baker Hostetler's California offices. (*Id.*) The acts or omissions for which DeLuca is sought to be held liable in this action, as described in paragraphs 14 to 77 of the complaint, all occurred outside California. (DeLuca Decl., ¶ 13.)

Based on the above, the highly attenuated contact in the form of service of the subpoenas is insufficient to support this Court's specific jurisdiction over DeLuca. Plaintiff fails to establish that DeLuca purposely availed herself of the benefits and protections of this district.

B. This Court Has No Personal Jurisdiction over the RICO Defendants

Alternatively, plaintiff claims that this Court may exercise personal jurisdiction over DeLuca and the attorney defendants under 18 U.S.C.S. § 1965, which confers nationwide jurisdiction in a RICO action over nonresident defendants. However, merely naming persons in a RICO complaint does not, in itself, make defendants subject to § 1965(b)'s nationwide service provisions. *Butcher's Union Local No. 498 v. SDC Investments, Inc.*, 788 F.2d 535, 539 (9th Cir. 1986) Section 1965 requires a RICO plaintiff to establish personal jurisdiction over at least one defendant under section 1965(a), who "resides, is found, has an agent, or transacts his affairs" in the forum. *Id.*

The term "transacts his affairs" means the corporate defendants' business contacts with forum have been repeated, substantial, and continuous over a period of years. *Abeloff v. Barth*, 119 F.R.D. 315, 326 (D.C. Mass. 1988). As to individual defendants, the issue is whether position

1 of individuals within corporation was such that they had actual power to control and exercised
 2 power to control corporation's transaction of business in the forum state. *Id.* Further, it must be
 3 shown that "the ends of justice" require the exercise of personal jurisdiction over the nonresident
 4 defendant. 18 U.S.C.S. § 1965(b). *Butcher's Union Local No. 498, supra*, 788 F.2d at 538.

5 DeLuca contends that there is a lack of personal jurisdiction over the RICO defendants
 6 because the RICO defendants had no significant contacts with California, and judicial economy
 7 does not favor trying action in this Court.

8 **1. The RICO Defendants Had No Significant Contacts with**
 9 **California**

10 In *Follett College Stores Corp. v. Fernandez*, 587 F. Supp. 1051 (C.D. Ill. 1984), plaintiff
 11 based its RICO claim on the alleged falsification of accounting reports, manipulation of store
 12 inventory, and misuse of assets and funds by the defendants originating at its regional office
 13 outside the forum district. *Id.* at 1053. Defendants' only contact with the forum district which
 14 relate to the subject matter of plaintiff's complaint were the mailing of documents and the making
 15 of telephone calls to persons within the forum district. *Id.* at 1052. While various defendants may
 16 have made numerous trips into the forum district, plaintiff did not allege or support the proposition
 17 that these trips related directly to the subject matter of the lawsuit. *Id.* at 1053. The court found
 18 that the forum district is unrelated to the heart of the lawsuit, and had no personal jurisdiction over
 19 defendants in a RICO action because virtually all of the alleged activities concerning the RICO
 20 cause of action referred to operation of defendant's business outside the forum area. *Id.* The court
 21 concluded that defendants' only contacts with the district involved document mailings and
 22 telephone calls originating from outside the forum district, and deemed such contacts to be
 23 minimal. *Id.*; see also *Dody v. Brown*, 659 F. Supp. 541, 545-546 (W.D. Mo. 1987) (finding that
 24 telephone calls and mailings that were done from outside of the district to a person within the
 25 district did not give rise to the level of regular, substantial and continuous activity within the
 26 district so as to satisfy § 1965(a)'s transaction of affairs requirement).

27 Similarly, here, no RICO defendants have significant contacts with California with respect
 28 to the underlying cause of action. DeLuca, Jambe, Shaw and Rollinson are all residents of Ohio

(para. 2-4, 6). The contempt proceeding is venued in Ohio state court (para. 20). While Baker Hostetler is a national law firm and has an office in California (para. 5), none of the legal services for DeLuca were handled by Baker Hostetler's California office. (DeLuca Decl., ¶ 5.) Rather, all legal work was done at the firm's Cleveland, Ohio office. (*Id.*) The only contact the RICO defendants had with this forum involved sending court-issued subpoenas to the PayPal defendants in connection with the contempt proceeding in Ohio (para. 24-25(a)-(c)). Serving subpoenas from an outside forum is analogous to document mailings and telephone calls originating from outside the forum district as in *Follett*. See *Follett College Stores Corp.*, *supra*, 587 F. Supp. at 1053. Such acts are insufficient to meet the constitutional requirement that defendants purposefully availed themselves of the benefits of this district. Plaintiff fails to establish that this Court may exercise personal jurisdiction over even one RICO defendant.

2. The Ends of Justice Is Not Served by Conferring Personal Jurisdiction over the RICO Defendants

In undertaking 18 U.S.C.S. § 1965(b) "ends of justice" analysis, courts consider: 1) location of parties, witnesses, records, and acts or omissions giving rising to claims; 2) whether juridical economy favors trying action in one court; 3) whether § 1965(b) venue promotes orderly and expeditious disposition of case; and 4) whether there exists alternative forum where venue is proper. *Crenshaw v. Antokol*, 287 F.Supp.2d 37, 42 (D. C. 2003).

Here, venue under § 1965(b) does not promote expeditious disposition of this case, because the RICO defendants reside in Ohio, defendants' witnesses and records are located in Ohio, and the alleged RICO Act claim occurred in Ohio. Judicial economy simply does not favor trying action in this Court.

C. This Court Lacks Subject Matter Jurisdiction

1. There Is No Complete Diversity

In a complaint against a limited partnership, the location of the partnership's "principal place of business" or headquarter is irrelevant to subject matter jurisdiction. Its citizenship for diversity purposes is determined by examining the citizenship of all of its partners, not the location of the entity. *Lincoln Property Co. v. Roche*, 546 U.S. 81, 84 (2005). Allegations are insufficient

1 as to complete diversity if the complaint fails to allege citizenship of all partners. *Barclay Square*
 2 *Properties v. Midwest Fed'l Sav. & Loan Ass'n of Minneapolis*, 893 F.2d 968, 969 (8th Cir. 1990).

3 Here, several partners at defendant Baker Hostetler, like plaintiff, are residents of Florida.
 4 (Dkt 13-1, ¶ 4.) Thus, there is no complete diversity between the parties.

5 **2. The Amount in Controversy Is Far Below the** 6 **Jurisdictional Threshold**

7 Diversity jurisdiction exists only "where the matter in controversy exceeds the sum or
 8 value of \$75,000, exclusive of interest and costs . . ." 28 U.S.C. § 1332(a). A dismissal for lack of
 9 jurisdictional amount is proper if it was legally impossible for plaintiffs to recover on their
 10 damages theories when the case was filed. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S.
 11 283, 288-289 (1938). Plaintiff has the burden to establish there is a preponderance of evidence
 12 which justifies recovery of at least the minimum jurisdictional amount. *McNutt v. General Motors*
 13 *Accept. Corp. of Indiana*, 298 U.S. 178, 189 (1936).

14 In *Christensen v. Northwest Airlines, Inc.*, 633 F.2d 529, 530-531 (9th Cir. 1980), plaintiff
 15 passenger sought general and punitive damages exceeding the jurisdictional threshold for anger
 16 and embarrassment suffered from a short verbal altercation with agents and employees of the
 17 defendant airline. The Ninth Circuit upheld the trial court's dismissal on ground the plaintiff's
 18 claims of damages were not made in good faith but only for the purpose of obtaining federal court
 19 jurisdiction. *Id.* at 530-531. The court found that it is clear to a legal certainty that plaintiff could
 20 not sustain a judgment over the jurisdictional minimum. *Id.* at 531. "A federal court should not
 21 and cannot adjudicate such minor claims." *Id.* at 530-531.

22 Here, it is legally impossible for plaintiff to recover damages over the jurisdictional
 23 threshold because the predicate acts, the attorneys' fees judgment and the subpoenas, had been
 24 sanctioned by the Ohio state court. Plaintiff fails to quantify how he arrives at the general
 25 damages figure of \$1,000,000 or the punitive and exemplary damages of \$2,000,000. Like the
 26 plaintiff in *Christensen*, plaintiff's claims of damages were not made in good faith but only for the
 27 purpose of securing federal court jurisdiction.

1 In light of the above, the complaint must be dismissed for lack of subject matter
 2 jurisdiction based on lack of complete diversity and the amount of controversy falling below the
 3 jurisdictional threshold. Further, dismissal for lack of subject matter jurisdiction deprives this
 4 Court of power over plaintiff's supplemental claims. *Scott v. Pasadena Unified School Dist.*, 306
 5 F.3d 646, 664 (9th Cir. 2002).

6
 7 **IV. CONCLUSION**

8 Based on the foregoing, DeLuca respectfully requests that the Court grant this Motion to
 9 Dismiss for lack of subject matter jurisdiction and lack of personal jurisdiction.

10 Dated: August 27, 2014

ROBINSON & WOOD, INC.

11
 12 By: /s/Jesse F. Ruiz

JESSE F. RUIZ

HELEN H. CHEN

13
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